

IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF ARKANSAS  
EL DORADO DIVISION

STEPHEN E. SLAUGHTER

PLAINTIFF

v.

Case No. 1:19-cv-1023

COLUMBIA MUTUAL INSURANCE  
COMPANY d/b/a COLUMBIA INSURANCE  
GROUP

DEFENDANT

**ORDER**

Before the Court is Defendant's Motion to Dismiss Plaintiff's First Amended Class Action Complaint. ECF No. 23. Plaintiff has filed a response. ECF No. 29. Defendant has filed a reply. ECF No. 35. The Court finds the matter ripe for consideration.

This putative class action lawsuit arises out of a motor vehicle accident that rendered Plaintiff's 2003 Chevrolet Silverado C1500 truck a total loss. Plaintiff alleges that Defendant failed to pay the actual cash value of his totaled vehicle because it utilized a valuation report ("AudaExplore Report") which it knew undervalued claims. Plaintiff asserts four causes of action on behalf of himself and a putative class of other similarly situated insureds: (1) violation of the Arkansas Deceptive Trade Practices Act; (2) fraud in the inducement; (3) bad faith; and (4) breach of contract.<sup>1</sup> All four causes of action are based on Defendant's alleged violation of Arkansas Insurance Rule 43, section 10, which Plaintiff claims sets forth the methods of determining the settlement of a total loss vehicle. Defendant argues that no private cause of actions exists for violations of Rule 43 and moves the Court to dismiss Plaintiff's claims.

Rule 43 was promulgated by the Arkansas insurance commissioner and was intended to implement the Trade Practices Act. *Design Prof'ls Ins. Co. v. Ch. Ins. Co.*, 454 F.3d, 906, 911

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<sup>1</sup> Plaintiff also seeks a declaration that Defendant's use of the AudaExplore Report to adjust first party insurance claims violates the respective insurance policies and Arkansas law and asks the Court to enjoin Defendant from using the AudaExplore Report to adjust future total loss vehicle claims in Arkansas.

(8th Cir. 2006). “The purpose of Rule 43 was to establish ‘certain minimum standards’ to control how insurance companies settle claims.” *Id.* at 912. (quoting Ark. Ins. Rule 43, § 1). While the Trade Practices Act allows the state of Arkansas to establish rules of conduct and punish offenders, it does not provide a private right of action to insureds for violations of the Act or of regulations promulgated under the Act’s authority. *Id.* at 911-12. All four of Plaintiff’s claims are based on an alleged violation of Rule 43, which protects all insureds by creating duties to the state, not by creating duties to individuals, and thus a private right of action. *Id.* Consequently, Plaintiff’s claims must be dismissed.

For the reasons discussed above, the Court finds that Defendant’s Motion to Dismiss Plaintiff’s First Amended Class Action Complaint (ECF No. 23) should be and hereby is **GRANTED**. Plaintiff’s claims are **DISMISSED WITHOUT PREJUDICE**.

**IT IS SO ORDERED**, this 5th day of March, 2020.

/s/ Susan O. Hickey  
Susan O. Hickey  
Chief United States District Judge